IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

AS.No. 445 OF 2000(D)

OS.51/1990 OF PRINCIPAL SUB COURT,KOLLAM

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APPELLANT/PLAINTIFF:

KOCHUKUNU OOMMACHANN ALIAS K. OOMMACHAN,
KAYALVARATHU PUTHEN VEEDU, PANAYAM, PERINAD P.O.,
KOLLAM.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.C.UNNIKRISHNAN

RESPONDENTS/DEFENDANTS:

1. THE STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.

3. THE ASSISTANT EDUCATIONAL OFFICER, KOLLAM.

4. K. ALEXANDER, KAYALVARATHU PUTHEN VEEDU, PANAYAM, PERINAD, KOLLAM.

5. K. GEORGE, KAYALVARATHU PUTHEN VEEDU, PANAYAM, PERINAD, KOLLAM. (DIED).

6. K. YOHANNAN ALIAS K. JOHN OF KAYALVARATHU PUTHEN VEEDU, PANAYAM, PERINAD, KOLLAM (DIED)

7. REV. K THOMAS, EBANEXAR MARTHOMA CHURCH, GANGAMA CIRCLE, JALLAHALLI, BANGALORE.

8. ELIZABATH CHERIYAN, D/O. KOCHUKUNJU, EDAYILA VEEDU, KUMBAM POIKABHAGATHU, PERUMPUZHA CHERRY, KOTTARAKKARA VILLAGE.

9. K. LUTHIYAMMA, D/O. KOCHUKUNJU, PADAKASALA PUTHEN VEEDU, KUMBANKODU WARD, AYOOR.

10. ANNAMMA, KARUMANKOTTU PUTHEN VEEDU, EDAMULAKKAL VILLAGE, VAYAKKAL P.O.

11. SOSAMMA K., MALAYILPALAMOOTTIL VEEDU, KADAMPANATTU VADAKKU, KUNNATHOOR TAKUK, PATHANAMTHITTA.

12. K. MARUKUTTY, PERUMATHU MADAM, KOIVILA P.O., PUTHEN SANKETHAM, THEVALAKKARA.

13. .KUNJAMMA JOHN, AGED 69 YEARS, W/O. YOHANNAN ALIAS K. JOHN, KAYALVARATHU PUTHEN VEEDU, PANAYAM, PERUNAD.

14. K.J. ABRAHAM, AGED 48 YEARS, S/O. YOHANNAN, ALIAS K. JOHN, KRIPA BHAVANAM, PANAYAM, ERINAD.

15. K.J. MARIYAMMA, AGED 46 YEARS, D/O. K. YOHANNAN, THOTTATHIL VEEDU, KOZHIKODE, KATTADY JUNCTION, POOYAPPALLY.

16. K.J. MATHUKUTTY, AGED 42 YEARS, S/O. K. YOHANNAN, KAYALVARATHU PUTHEN VEEDU, PANAYAM NORTH, PERINAD NOW AT T.C. 4/1187 KURAVANKONAM MARKET WARD, KAWDIAR P.O., THIRUVANANTHAPURAM.

17. J. SWANNAMMA, AGED 38 YEARS, D/O. K. YOHANAN, THINAKKAL PURATHU, KUMPALAMPOIKA, PATHANAMTHITTA NOW AT B1-T2, ZURI COMPLEX BAINA, VASCO GOA.

18. K.J. ALEXANDER, AGED 35 YEARS, S/O. YOHANNAN, KAYALVARATHU PUTHEN VEEDU, PANAYAM, NORTH PERINAD NOW AT PB NO. 795, AL KHAFJI 31971 KSA.

19. K.J. PHILIPP, AGED 31 YEARS, S/O. K. YOHANNAN, KAYALVARATHU PUTHEN VEEDU, PANAYAM, NORTH PERINAD, NOW AT C/O. GEORGE MANUEL 4400 WIOKHAM AVE APARTMENT 4-B BRONEX, NEWYORK 10466, 1257 U.S.A.

20. SAJAN, S/O. OOMMACHAN, KAYALVARATHU PUTHEN VEEDU, PANAYAM.

ADDITIONAL RESPONDENTS:-

21 K.G. MARIAMMA, D/O. K. GEORGE, PAAVOOR HOUSE, NANDAN CODE, THIRUVANANTHAPURAM.

22. G. ALEYAMMA, W/O. JACOB, MEDAYIL PUTHEN VEEDU, POOYAPPALLY P.O., KOLLAM.

23. K.G. THOMAS, ENGLISH MEDICALS, NEAR KUMAR THEATRES, CHINNAKADA, KOLLAM.

(ADDL. R21 TO R23 IMPLEADED AS LEGAL REPRESENTATIIVES OF DECEASED 5TH RESPONDENT AS PER ORDER ON I.A. 416/2006 DATED 7.2.2006.)

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R1,R2 & R3 BY GOVERNMENT PLEADER SRI. SUBAL PAUL.
R4,R5 & R14 BY ADV. SRI.S.RAMESH BABU
R7 BY ADV. SRI.S.ABHILASH
R20 BY ADV. SRI.S.HARIKRISHNAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 07/02/2007, ALONG WITH AS NO. 413 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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A.S. NO. 413 & 445 OF 2000

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DATED THIS, THE 7TH DAY OF FEBRUARY, 2007

J U D G M E N T

The appellants in A.S. 413/2000 are defendants 8, 9 and 11 in O.S. 51/1990 of the Principal Sub Court, Kollam. A.S. 445/2000 is filed by the plaintiff in the above suit. Thus, both these appeals are against the same judgment and decree in O.S. 51/1990.

2. Briefly stated, the plaint allegations are as follows: The plaint schedule property originally belonged to the father of the plaintiff and defendants 4 to 7, late Idichandi Kochukunju, that during his life time, he established an upper primary school in the plaint schedule property, some 50 years back, that the school was under his management and he died on 3.3.1956, that the school is an aided school, getting annual maintenance grant from Government, that after the death of Idichandi Kochukunju, his legal heirs who are the plaintiff and defendants 4 to 7 had jointly executed an udampadi on 10.6.1959 as per which plaintiff got equal right along with defendants 4 to 7 in the said school and its premises constituting an

educational agency, that from the date of execution of the udampadi, the 7th defendant was the manager of the plaint schedule U.P. school, that the plaintiff was appointed as a teacher in the said school and later, he became the Headmaster in the year 1972 and still he is continuing in the said post, that the 7th defendant who was holding the post of Manager resigned from the said post on 9.9.1989 and thereafter, the plaintiff though received an intimation regarding the proposed meeting to be held on 5.11.1989 for framing the new scheme and to appoint a new manager, that plaintiff came to know that defendants 4 to 7 have assembled together and decided to nominate the 4th defendant as the Manager of the school, that since he received the notice only on 7.11.1989 whereas the proposed meeting was scheduled to be held on 5.11.1989 any decision taken in the said meeting is without his knowledge and without any notice to him and that since there is no scheme framed, it is necessary that a scheme be framed for the plaint schedule Upper Primary School. Though the plaintiff has not resisted the framing of the scheme, the 4th defendant is not competent to be the manager of the school for various reasons. The appointment and approval of the 4th respondent will cause irreparable injury and hardship to the plaintiff. The rest of the allegations contained in the plaint may not be quite necessary at this stage. However, it will be referred to if and when necessary.

3. Defendants 1 to 3 filed a common written statement denying the averments and allegations in the plaint. They admitted the fact that the plaintiff is the Headmaster of the U.P. School; but denied that he is the authorized manager. According to the defendants, the 7th defendant Rev. Fr K. Thomas was the manager of the school till he relinquished his post on 9.9.1989. Relinquishment of the post by the 7th defendant is stated in his letter sent to the Educational Officer, Kollam. There is no approval in favour of defendants 4 to 6 for appointment of the 4th defendant as the manager of the school. It is admitted that manager is required for the smooth functioning of the institution.

4. Defendants 4 to 6 filed a common written statement admitting the right of their deceased father as the profounder of the school. The execution of the udampadi in the year 1959 after the death of their father is also admitted. But according to them since the 4th respondent was appointed as the Manager of the School by the Government, he is continuing as the Manager with effect from 11.4.1990 and as such there is no necessity to get a scheme framed. They also alleged that the appointment of Headmaster is not a normal appointment and according to them, the 7th defendant was not able to do his duties as the Manager as he was serving at a far away place and some blank papers happened to be signed by him

were used by the plaintiff for appointing teachers and other staff in the school without his knowledge, that the allegation of the plaintiff that the 4th respondent is illegally acting as the manager is without any merit, that the plaintiff is not competent to hold the post of Manager and that the plaint averments are false and the suit is liable to be dismissed. Subsequently, the suit was amended and additional written statement was also filed in which the management of the plaint schedule is also challenged. According to the defendant, 14 cents of land lying contiguous to the school compound clearly demarcated and the present amendment of the schedule is to include that 14 cents as the school property. It is the specific case of defendants 4 and 5 that the Udampadi of the year 1959 is a valid udampadi based on which the daughters of Idichandi Kochukunju are having no right to the school administration or over the school property and if at all there was any such right, the same has been lost by adverse possession and limitation. Defendants 8 and 9 are sisters of the plaintiff and according to them, deceased Idichandi Kochukunju left behind his male and female children and his wife; but in the absence of a document to show his intention to give the right over the school property in favour of the male members only, defendants 8 and 9 who are the female children of Idichandi Kochukunju are also entitled to participate in the school

administration and they are having equal right with his other children and therefore, the plaintiff's prayer limiting to the male children in respect of the school properties is not justifiable and the plaint claim is not allowable. The 11th respondent in her written statement contended that the udampadi executed between defendants 4 to 7 and the plaintiff is an udampadi created without any manner of right for them over the plaint schedule school property, that she is having no objection in creating a trust for the administration of the school and that since the wife and children of Idichandi Kochukunju have equal right over the school property, she is entitled to get 1/10th share in it. She has made a counter claim for which purposoe court fee has also been paid. The additional 14th defendant, son of the 6th defendant, who died during the pendency of the suit , contended that Idichandi Kochukunju had already given the rightful shares to his daughters as per the customary laws and therefore, they have no right to manage the school property or to alienate his share under law.

5. The court below framed necessary issues including an issue regarding the necessity to frame a scheme for management and administration of the school, whether defendants 8 to 12 are entitled to participate in the management and administration of the school as contended by defendants 8 and 9 and whether the 4th respondent is liable to be

removed from the managerial post. Additional issues were also raised based on the written statement of Defendants 4 and 5 and the written statement filed by the Additional 14th defendant as to whether the right of share over the school property and its management of defendants 8 to 12 is barred by limitation, whether the 7th defendant has a right to alienate his share over the school property and whether the 14th defendant is having 1/5th share in the plaint schedule school and its management by virtue of devolution of right on the death of the 6th defendant.

6. PW.1 was examined and Exts.A1 to A17 were marked on the plaintiff's side. On the defendants' side DW1 was examined and Exts. B1 to B29 were marked. The trial court found that the suit is maintainable. While considering Issue No.4 and Additional Issue Nos. 6, 7 and 8 the court below found that Ext.A1 is the document relied on by the plaintiff in support of his right claimed in the plaint, which is a settlement deed by which the profounder of the school has partitioned his property including the ancestral properties and his self acquired properties and settled in favour of his male children. With regard to the intention to give properties to the male children only, the profounder has clarified in Ext.A1 that he has already given the proper shares to the respective female children in connection with their marriage and he being the owner of the property, was

having an absolute right to settle the right in favour of his children. The other documents marked in support of the plaintiff are Exts.A2 to A16. Ext.A2 is the tax receipt in respect of the respective allotments to the male children, A3 is a thandaper account obtained in the name of five male children of Kochukunju, Ext.A4 is the Udampadi executed between his male children for the administration of the school established by Kochukunju wherein the parties have given a recital that they were given properties by their father excluding the property where the school is functioning, having an extent of 47 1/2 cents in Sy. No. 2114 and Ext.A5 is a letter from the 7th defendant relinquishing his post as manager of the school without affecting his ownership over the property. After referring to the v arious proceedings pending before this court in various writ petitions, the court below came to the conclusion that there are some disputes regarding the management of the school and that Exts.A1 to A17 documents produced on the side of the plaintiff did not prove his absolute right over the school property being one of the legal heirs of Idichandi Kochukunju. After referring to the evidence of the defendants and on an over all consideration of the oral testimony of the plaintiff and the other documentary evidence produced in the case, the court below came to the conclusion that there are disputes between the plaintiff and defendants 4 to 6 in respect of the administration of the school

affairs, that the 7th defendant has resigned from the post of manager due to mal administration in the school, that after the resignation of the 7th defendant, the 4th defendant was appointed as the manager without the junction of the plaintiff as he received the intimation belatedly, that defendants 8 to 12 who are the female children of deceased Kochukunju claiming equal right over the school property, that they did not challenge Ext.A1 by claiming any share in the property of their father and hence their claim to get equal right over the school property is without any basis, that Kochukunju had given justifiable shares to his children and the school property has been kept separately without allotting its shares to his children with the intention to continue the same as an educational agency, that the school properties were under the management of Kochukunju till his death, that as per Ext.A4 udampadi, the male children of Kochukunju agreed to manage the school affairs by themselves and in the absence of any of them, their legal heirs are having the right to manage the school by forming their opinion by themselves, for the well administration of the school and that in the absence of any challenge against Exts.A1 and A4 documents, the contention of defendants 8 to 12 that they are entitled to get share over the school property is without any merits. At the same time, it was found that based the right of management over the educational agency it cannot be

concluded that the male children of the Kochukunju are having any absolute right to partition the property between them, that the parties to Ext.A4 are only trustees and the school property is a trust property whcih can be managed by the male childlren of Kochukunju and in their absence, their legal heirs can continue by framing necessary rules for the administration of the school, that Ext.A1 is not clear enough to show the intention of Kochukunju to get independent shares over the school property to each of his children, that Ext.A4 only provided provision for management of the school affairs by their legal heirs by forming separate rules by themselves for the well administration of the school, that considering the dispute between the plaintiff and defendants 7 and 4, the strained relationship itself is sufficient to disallow the plaintiff's claim to appoint him as the manager of the school, that the 4th respondent is continuing as the manager of the school and that for the well administration of the school a scheme shall be settled for the purpose of which a preliminary decree can be passed by allowing the suit claim partly in favour of the plaintiff. Accordingly, it was held that until a scheme is framed, the present manager can continue as the manager and the parties to Ext.A4 Udampadi are having right to convene a meeting after settlement of the scheme for selecting the manager, based on their need to ascertain on proper

administration of the school. Accordingly, a preliminary decree was passed for framing a scheme and the counter claim of 11th defendant to get partition of the property was dismissed.

7. The finding of the court below that the female children of Idichandi Kochukunju are not entitled to the administration of the school is seriously challenged in this appeal . As 445/2000 was fileld by the plaintiff aggrieved by the fact that he was not appointed as the manager whereas the 4th respondent was appointed as the manager until a proper scheme is framed. Defendants 4, 6 and 7 and their legal representatives seek to support the judgment and decree passed by the trial court.

8. Learned counsel for the appellants in A.S. 413/2000 would seriously challenge the finding of the court below that because of the recitals contained in Ext.A1 the female children stand excluded even from the right to manage or administer the school. According to them, Ext.A1 deed itself contains a specific exclusion regarding the school properties and the father had made his intention so clear that this property is not partible and until his death in 1956, he was managing the affairs of the school. It is also their case that on the plea regarding adverse possession there is no satisfactory evidence. Be that it may, during the course of their submission they have fairly conceded that they are not pressing their claim for division

of the school property as such, but they have to get the right to manage the affairs of the school along with the other members.

9. Learned counsel for the contesting defendants however maintained that the judgment and decree passed by the court below is perfectly valid. According to him, the recitals contained in Ext.A1 beyond doubt shows the intention of the profounder not to give any share in the property to the female members. Having stated so in Ext.A1 that the female children were given their due shares at the time of their marriage, it cannot be the intention of the profounder to give any right in the administration of the school in the normal course and whatever left behind him would be succeeded by the male members only. According to him, even though an issue was raised, both sides did not adduce any satisfactory evidence regarding this and therefore, the matter is to be remanded and an opportunity will be given to the parties to adduce evidence. According to him, ever since 1959 from the date of that udampadi, an educational agency consisting of the male members had come into effect and females were totally excluded since they have no right over the administration of the school. Anybody can be appointed as the manager that is by the consensus of the parties who constitute the educational agency. If in the appointment of the manager no right is exercised by the females and only by the male members who had

the right to appoint the manager, it is that right which is lost by adverse possession and limitation. He placed reliance on the decision of this Court in **Amendra Pratap Singh v. Tej Bahadur Prajapati and Ors. (2004 SAR (Civil) 9).**

10. Having heard the rival submissions and after perusing Ext.A2 and other materials on record, I find that the argument based on Ext.A1 deed that the females are not given any right over the properties by the father for the reason that they have already been given their due shares at the time of marriage will hold good as regards the property covered by Ext.A1. But admittedly, the concluding portion of Ext.A1 deed clearly excludes the school property from the purview of Ext.A1 settlement deed and admittedly, till the death of the father, he was exclusively managing the affairs of the school. Therefore, the recitals contained in Ext.A1 as regards the exclusion of any right to the female members to claim any right over the properties already divided as per Ext.A1, it may not hold good as regards the property not covered by Ext.A1. Therefore, the finding as regards this aspect is concerned by the court below is set aside. However, the fact remains that eversince 1959 the females were not in the administration of the school and at any rate there was no evidence regarding the same. At any rate, the

question as to whether the right to manage the affairs of the school was exclusively been exercised by the male members only and whether the mere fact that the 7th defendant was appointed as the manager on whom there is no dispute by the female members could be a valid defence to show that there is no adverse possession and limitation is a mooted question. On going by the evidence adduced in the case, it has to be held that there is no satisfactory evidence adduced by either parties on the question of adverse possession and limitation. Therefore, both sides shall be given sufficient opportunity to adduce evidence on the issue regarding adverse possession and limitation and if it is found that the right if any of the female members are lost by adverse possession, then necessarily the management and administration of the school affairs will be the exclusive right conferred on the male members only.

11. It is submitted that the 4th defendant who was to continue as the manager until a scheme is framed has been resigned from the post. If so, for the proper administration of the school until a final decision is rendered by the court below, it is open to the male members to apply for any alternate arrangement to be made temporarily for the administration of the school until a final decision is taken by the court below.

Accordingly, the appeals are allowed to the extent of setting aside the finding of the court below. The matter is remitted so as to enable the court below to dispose of the suit in accordance with law and what has been stated above. The court below shall dispose of the matter within a period of three months from the date of receipt of a copy of this judgment.

P.R. RAMAN,
JUDGE.

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P.R. RAMAN, J.
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A.S. NOS. 413 & 445/2000
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7TH FEBRUARY, 2007.